



PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays an OMB control number.

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**Docket Number (Optional)  
19200-000067/US

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

Application Number  
10/593,156Filed  
September 18, 2006First Named Inventor  
Anders BJÖRK et al.

On \_\_\_\_\_

Art Unit  
3644Examiner  
Monica Williams

Signature \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 35,094.

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Signature

John A. Castellano  
Typed or printed name703.668.8000  
Telephone numberNovember 18, 2008  
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 10/593,156                      Art Unit: 3644  
Filing Date: September 18, 2006              Examiner: Monica Williams  
Applicant: Anders BJORK et al.              Conf.: 7556  
Title: METHOD AND MILKING STATION FOR MILKING  
ANIMALS

Attorney Docket: 19200-000067/US

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314  
**Mail Stop AF**

November 18, 2008

**ATTACHMENT TO FORM PTO/SB/33**  
**REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Conferees:

In response to the Final Office Action mailed on August 18, 2008 ("Final Office Action"), Applicants request that the Pre-Appeal Brief Conference review the pending rejections. The Reasons for Pre-Appeal Brief Request for Review are being filed concurrently with the Pre-Appeal Brief Request for Review and a Notice of Appeal.

Claims 1-20 are pending in the current Application and stand rejected.

Claims 1 and 14 are independent claims.

**Rejection For Which Conference Review Is Requested**

A Pre-Appeal-Brief Conference is respectfully requested to review the rejection of claims 1-4, 7, 10-11, 14-17, and 20 under 35 U.S.C. § 102(b) as

being anticipated by US Pat 5,778,820 to Van der Lely et al. ("Van der Lely") and the rejection of claims 5, 6, 8, 9, 12, 13, 18, and 19 under 35 U.S.C. § 103(a) as being unpatentable over Van der Lely in view of one of US Pat 5,769,023 to Van der Lely et al. ("Van der Lely '023"), US Pat 6,263,832 to Van der Berg ("Van der Berg"), and US Pat 6,543,381 to Birk et al. ("Birk").

**I. The rejection under § 102(b) to claims 1 and 14 is improper in at least that Van der Lely fails to explicitly or inherently disclose each and every element of those claims, as required under § 102(b).**

Initially, please refer to Applicants' arguments on the record, particularly on pages 7-8 of the Amendment filed May 22, 2008. Claim 1 recites, *inter alia*, "terminating said feeding of said milking animal at a non-final stage of said milking in order to secure that said milking animal has terminated to consume the feed when said milking is finished." Applicants respectfully submit that the broadest interpretation of this element requires that 1) food **consumption** "has terminated" at milking completion and 2) that **feeding** be correspondingly ended even earlier, during milking, to secure that the first requirement is met. Van der Lely does not teach this distinct consumption and feeding timing recited in claim 1. Van der Lely is concerned with only feeding (food dispensation) timing and is silent with regard to timing of consumption of the feed by the milking animal. See Van der Lely, Abstract. Worse, where Van der Lely discusses feeding, Van der Lely teaches that feeding continues up to or through milking termination, such that **consumption extends beyond milking** and could never inherently terminate during milking due to earlier

feeding termination. See Van der Lely, Col. 1, ll. 56-61; Col. 6, ll. 46-49. For example, Van der Lely contemplates the situation where the actual feeding does not finish until after milking is completed. See Van der Lely, Col. 2, ll. 6-15 ("if the feeding period has not yet elapsed while the . . . milking . . . has already been finished."). Such a scenario is forbidden by the plain language of claim 1, and thus Van der Lely does not meet the above-quoted element of that claim.

Because Van der Lely does not disclose or fairly teach the separate feeding and consumption timings of claim 1, Van der Lely cannot anticipate claim 1 under § 102. Claim 14 recites apparatuses configured with similarly unique timing elements over Van der Lely and is thus equally allowable over that reference. Claims 2-4, 7-8, 10-11, 15-17 and 20 are allowable at least for depending from an allowable base claim. The Conference's reversal of the rejection under § 102(b) to claims 1-4, 7-8, 10-11, 14-17 and 20 is respectfully requested.

**II. The rejection under § 103(a) to claims 5, 6, 8, 9, 12, 13, 18, and 19 is improper in at least that these claims depend from an allowable base claim.**

None of Van der Lely '023, Van der Berg, and Birk teach, nor does the Examiner apply them for teaching, the elements of claim 1 missing from Van der Lely, discussed above. Specifically, the secondary references do not disclose a method of feeding wherein food distribution is terminated at a time such that consumption terminates before milking terminates. Because Van

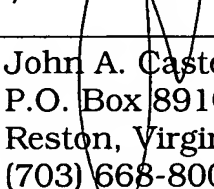
der Lely, alone or in combination with Van der Lely '023, Van der Berg, and Birk, fails to teach or fairly suggest each and every element of claims 1 or 14, these references cannot anticipate or render obvious claims 1 or 14. Claims 5-6, 8-9, 12-13, and 18-19 are allowable at least for depending from an allowable base claim. The Conference's reversal of the rejection under 35 U.S.C. § 103(a) to claims 5-6, 8-9, 12-13, and 18-19 is respectfully requested.

**CONCLUSION**

In view of the above, Applicants respectfully request that the Conference consider and reverse the current rejections and either allow the present application or reopen prosecution in connection with the present application. Should there be any outstanding matters that need to be resolved in the present application, the Board is respectfully requested to contact the undersigned at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,  
HARNES DICKY, & PIERCE, P.L.C.

By:   
John A. Castellano, Reg. No. 35,094  
P.O. Box 8910  
Reston, Virginia 20195  
(703) 668-8000

2A  
JAC/REA